

REMARKS

This Amendment & Response amends claims 1, 2 and 3, cancels claims 14-21, and adds new claims 23-27. Claims 1-13 and 22-27 remain pending in the application.

Objections to the Specification

1.0 *The Examiner has objected to the specification for use of an incorrect reference numeral.*

The specification has been amended to correct the incorrect reference numeral in paragraph [0069] as noted by the Examiner. Withdrawal of this rejection is respectfully requested.

***Objections/Rejections
Under 35 U.S.C. §102 and §103***

2.0 *The Examiner has rejected claims 1, 8, 11, 14-17 and 22 as anticipated by Lovell.*

SUMMARY OF CITED REFERENCE

Lovell (United States Patent No. 4,307,471) discloses a protective helmet comprising overlapped inner and outer layers attached at multiple points so as to permit the inner and outer layers to move towards and away from one another.

SUMMARY OF CLAIMED INVENTION

A First Embodiment of the Present Claimed Invention (claims 1-13 and 22 and 24) is a protective headguard with overlapped inner and outer layers attached at a single point within the crown portion of the headguard. The layers are attached so as to permit frictional sliding of at least one area of the outer layer over the inner layer.

A Second Embodiment of the Present Claimed Invention (claims 23-24) is a protective headguard with overlapped inner and outer layers attached at a single point of attachment so as to permit pivoting of the outer layer relative to the inner layer about a pivot axis extending through the point of attachment. The layers are attached so as to permit frictional sliding of at least one area of the outer layer over the inner layer.

A Third Embodiment of the Present Claimed Invention (claims 25-27) is a protective headguard with overlapped inner and outer layers attached at a pair of diametrically opposed points of attachment so as to permit pivoting of the outer layer relative to the inner layer about a pivot axis extending through these points of attachment. The layers are attached so as to permit frictional sliding of at least one area of the outer layer over the inner layer when the outer layer is pivoted about the pivot axis relative to the inner layer.

LEGAL BASIS

An anticipation rejection under 35 U.S.C. § 102 requires that the cited reference(s) disclose each and every element of the claimed invention. *See, Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); *Kloster Speedsteel AB et al. v. Crucible Inc. et al.*, 230 U.S.P.Q. 81, 84 (Fed. Cir. 1986). A reference anticipates a claim only when the reference discloses each and every element recited in the claim. *See, Verdegaaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051 (Fed. Cir. 1987) and M.P.E.P. §2131. Accordingly, the "exclusion of a claimed element from a prior art reference is enough to negate anticipation by that reference." *Atlas Powder Co. v. E.I. duPont De Nemours & Co.*, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984).

LOVELL DOES NOT DISCLOSE EACH AND EVERY ELEMENT OF THE CLAIMED INVENTION.

The First Embodiment of the Present Claimed Invention attaches the inner and outer layers at a single point of attachment within the crown portion of the headguard. The helmet of Lovell requires several attachment points located proximate the edges of the helmet. The Second

Embodiment of the Present Claimed Invention attaches the inner and outer layers at a *single point of attachment* so as to permit *pivoting of the outer layer relative to the inner layer about a pivot axis extending through the point of attachment*. The helmet of Lovell requires several attachment points and does not permit pivoting of the outer layer relative to the inner layer about the points of attachment. The Third Embodiment of the Present Claimed Invention attaches the inner and outer layers at a pair of diametrically opposed points of attachment so as to permit *pivoting of the outer layer relative to the inner layer about a pivot axis extending through the points of attachment*. The helmet of Lovell does not permit pivoting of the outer layer relative to the inner layer about the points of attachment.

3.0 *The Examiner has rejected claims 2-4, 6, 7, 9, 10, 18, 19 and 21 as anticipated by World Patent to Von Holst et al.*

SUMMARY OF CITED REFERENCE

Von Holst et al. (International Patent Application Publication No. WO 2001/45526) discloses a protective helmet comprising overlapped inner and outer layers attached along the outer edges by a flexible clip so as to permit the outer layer to be displaced relative to the inner layer.

SUMMARY OF CLAIMED INVENTION

A First Embodiment of the Present Claimed Invention (claims 1-13 and 22 and 24) is a protective headguard with overlapped inner and outer layers attached at a single point within the crown portion of the headguard. The layers are attached so as to permit frictional sliding of at least one area of the outer layer over the inner layer.

A Second Embodiment of the Present Claimed Invention (claims 23-24) is a protective headguard with overlapped inner and outer layers attached at a single point of attachment so as to permit pivoting of the outer layer relative to the inner layer about a pivot axis extending through

the point of attachment. The layers are attached so as to permit frictional sliding of at least one area of the outer layer over the inner layer.

A Third Embodiment of the Present Claimed Invention (claims 25-27) is a protective headguard with overlapped inner and outer layers attached at a pair of diametrically opposed points of attachment so as to permit pivoting of the outer layer relative to the inner layer about a pivot axis extending through these points of attachment. The layers are attached so as to permit frictional sliding of at least one area of the outer layer over the inner layer when the outer layer is pivoted about the pivot axis relative to the inner layer.

LEGAL BASIS

An anticipation rejection under 35 U.S.C. § 102 requires that the cited reference(s) disclose each and every element of the claimed invention. *See, Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); *Kloster Speedsteel AB et al. v. Crucible Inc. et al.*, 230 U.S.P.Q. 81, 84 (Fed. Cir. 1986). A reference anticipates a claim only when the reference discloses each and every element recited in the claim. *See, Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051 (Fed. Cir. 1987) and M.P.E.P. §2131. Accordingly, the "exclusion of a claimed element from a prior art reference is enough to negate anticipation by that reference." *Atlas Powder Co. v. E.I. duPont De Nemours & Co.*, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984).

VON HOLST DOES NOT DISCLOSE EACH AND EVERY ELEMENT OF THE CLAIMED INVENTION.

The First Embodiment of the Present Claimed Invention attaches the inner and outer layers *at a single point of attachment within the crown portion of the headguard*. The helmet of Von Holst et al. attaches the inner and outer layers proximate the edges of the helmet. The Second Embodiment of the Present Claimed Invention attaches the inner and outer layers *at a single point of attachment so as to permit pivoting of the outer layer relative to the inner layer about a pivot axis extending through the point of attachment*. The helmet of Von Holst et al. does not permit

pivoting of the outer layer relative to the inner layer about the points of attachment. The Third Embodiment of the Present Claimed Invention attaches the inner and outer layers at a pair of diametrically opposed points of attachment so as to permit *pivoting of the outer layer relative to the inner layer about a pivot axis extending through the points of attachment*. The helmet of Von Holst et al. does not permit pivoting of the outer layer relative to the inner layer about the points of attachment.

4.0 *The Examiner has rejected claim 5 as obvious over World Patent to Von Holst et al. in light of Marietta*

SUMMARY OF CITED REFERENCE

Von Holst et al. (International Patent Application Publication No. WO 2001/45526) discloses a protective helmet comprising overlapped inner and outer layers attached along the outer edges by a flexible clip so as to permit the outer layer to be displaced relative to the inner layer.

Marietta (United States Patent No. WO 3,568,210) discloses a protective helmet comprising a rigid outer shell and an inner form-fitting liner. Marietta discloses attachment of the inner for-fitting liner to the outer shell by any suitable means including adhesives and mechanical fasteners.

SUMMARY OF CLAIMED INVENTION

A First Embodiment of the Present Claimed Invention (claims 1-13 and 22 and 24) is a protective headguard with overlapped inner and outer layers attached at a single point within the crown portion of the headguard. The layers are attached so as to permit frictional sliding of at least one area of the outer layer over the inner layer.

A Second Embodiment of the Present Claimed Invention (claims 23-24) is a protective headguard with overlapped inner and outer layers attached at a single point of attachment so as to

permit pivoting of the outer layer relative to the inner layer about a pivot axis extending through the point of attachment. The layers are attached so as to permit frictional sliding of at least one area of the outer layer over the inner layer.

A Third Embodiment of the Present Claimed Invention (claims 25-27) is a protective headguard with overlapped inner and outer layers attached at a pair of diametrically opposed points of attachment so as to permit pivoting of the outer layer relative to the inner layer about a pivot axis extending through these points of attachment. The layers are attached so as to permit frictional sliding of at least one area of the outer layer over the inner layer when the outer layer is pivoted about the pivot axis relative to the inner layer.

LEGAL BASIS

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, NOT in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). See, M.P.E.P. § 2143.

As to the first criteria, it is necessary to ascertain whether or not the reference motivates one of ordinary skill in the relevant art, having the reference before him, to make the proposed substitution, combination, or modification. In re Linter, 458 F.2d 1013, 173 U.S.P.Q. 560, 562 (CCPA 1972). Obviousness can only be established where there is some teaching, suggestion or motivation in the prior art or in the knowledge generally available to one of ordinary skill in the art, to combine the references and produce the claimed invention. In re Fine, 837 F.2d 1071, 5 U.S.P.Q. 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). See, M.P.E.P. § 2143.01.

*NEITHER VON HOLST ET AL. NOR MARIETTA DISCLOSE, TEACH OR SUGGEST
ALL CLAIMED ELEMENTS*

The First Embodiment of the Present Claimed Invention attaches the inner and outer layers at a single point of attachment within the crown portion of the headguard. The helmet of Von Holst et al. attaches the inner and outer layers proximate the edges of the helmet. Marietta is silent as to the location(s) at which the inner form-fitting liner is attached to the outer shell as the helmet of Marietta is not designed nor intended to permit movement of the inner comfort liner relative to the outer shell once attached. The Second Embodiment of the Present Claimed Invention attaches the inner and outer layers at a single point of attachment so as to permit pivoting of the outer layer relative to the inner layer about a pivot axis extending through the point of attachment. Neither Von Holst et al. nor Marietta disclose, teach or suggest a helmet that permits pivoting of an outer layer relative to an inner layer about the points of attachment. The Third Embodiment of the Present Claimed Invention attaches the inner and outer layers at a pair of diametrically opposed points of attachment so as to permit pivoting of the outer layer relative to the inner layer about a pivot axis extending through the points of attachment. Neither Von Holst et al. nor Marietta disclose, teach or suggest a helmet that permits pivoting of an outer layer relative to an inner layer about the points of attachment.

5.0 *The Examiner has rejected claim 12 as obvious over World Patent to Von Holst et al. in light of Lovell.*

Applicant respectfully submits that claim 12 is patentable over a combination of Von Holst et al. and Lovell for the reasons set forth in paragraphs 2.0 and 4.0 of the Amendment and Response directed to patentability of the First Embodiment of the Present Claimed Invention over Lovell and a combination of Von Holst et al. and Marietta, respectively.

6.0 *The Examiner has rejected claim 13 as obvious over World Patent to Von Holst et al. in light of Keltner*

SUMMARY OF CITED REFERENCE

Von Holst et al. (International Patent Application Publication No. WO 2001/45526) discloses a protective helmet comprising overlapped inner and outer layers attached along the outer edges by a flexible clip so as to permit the outer layer to be displaced relative to the inner layer.

Keltner (United States Patent No. WO 3,999,220) discloses a protective football helmet comprising a rigid outer shell and an inner comfort liner. Keltner discloses attachment of the inner comfort liner to the outer shell by any suitable means including adhesives.

SUMMARY OF CLAIMED INVENTION

A First Embodiment of the Present Claimed Invention (claims 1-13 and 22 and 24) is a protective headguard with overlapped inner and outer layers attached at a single point within the crown portion of the headguard. The layers are attached so as to permit frictional sliding of at least one area of the outer layer over the inner layer.

A Second Embodiment of the Present Claimed Invention (claims 23-24) is a protective headguard with overlapped inner and outer layers attached at a single point of attachment so as to permit pivoting of the outer layer relative to the inner layer about a pivot axis extending through the point of attachment. The layers are attached so as to permit frictional sliding of at least one area of the outer layer over the inner layer.

A Third Embodiment of the Present Claimed Invention (claims 25-27) is a protective headguard with overlapped inner and outer layers attached at a pair of diametrically opposed points of attachment so as to permit pivoting of the outer layer relative to the inner layer about a pivot axis extending through these points of attachment. The layers are attached so as to permit

frictional sliding of at least one area of the outer layer over the inner layer when the outer layer is pivoted about the pivot axis relative to the inner layer.

LEGAL BASIS

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, NOT in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). *See*, M.P.E.P. § 2143.

As to the first criteria, it is necessary to ascertain whether or not the reference motivates one of ordinary skill in the relevant art, having the reference before him, to make the proposed substitution, combination, or modification. In re Linter, 458 F.2d 1013, 173 U.S.P.Q. 560, 562 (CCPA 1972). Obviousness can only be established where there is some teaching, suggestion or motivation in the prior art or in the knowledge generally available to one of ordinary skill in the art, to combine the references and produce the claimed invention. In re Fine, 837 F.2d 1071, 5 U.S.P.Q. 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). *See*, M.P.E.P. § 2143.01.

NEITHER VON HOLST ET AL. NOR KELTNER DISCLOSE, TEACH OR SUGGEST ALL CLAIMED ELEMENTS

The First Embodiment of the Present Claimed Invention attaches the inner and outer layers at a single point of attachment within the crown portion of the headguard. The helmet of Von Holst et al. attaches the inner and outer layers proximate the edges of the helmet. Keltner provides multiple points of attachment throughout the helmet as the helmet of Keltner is not designed nor intended to permit movement of the inner comfort liner relative to the outer shell.

The Second Embodiment of the Present Claimed Invention attaches the inner and outer layers at a *single point of attachment* so as to permit *pivoting of the outer layer relative to the inner layer about a pivot axis extending through the point of attachment*. Neither Von Holst et al. nor Keltner disclose, teach or suggest a helmet that permits pivoting of an outer layer relative to an inner layer about the points of attachment. The Third Embodiment of the Present Claimed Invention attaches the inner and outer layers at a pair of diametrically opposed points of attachment so as to permit *pivoting of the outer layer relative to the inner layer about a pivot axis extending through the points of attachment*. Neither Von Holst et al. nor Keltner disclose, teach or suggest a helmet that permits pivoting of an outer layer relative to an inner layer about the points of attachment.

7.0 *The Examiner has rejected claim 20 as obvious over World Patent to Von Holst et al. in light of Lovell.*

Claim 20 has been cancelled, rendering this rejection moot.

CONCLUSION

Applicant respectfully submits that all pending claims (claims 1-13 and 22-27) are in condition for allowance.

Respectfully submitted,

Date

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By

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